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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

GE.99-10528 (E)

1. The International Federation of Human Rights (FIDH), and its parteners, the Council for Human Rights and the Belgrade Centre for Human Rights are deeply concerned by the widespread violations of the freedom of expression, the press and opinion in the territory of the Federal Republic of Yugoslavia (FRY).

1. General

2. Provisions on the freedom of expression in Yugoslav constitutions appear to be generally in accordance with international standards. All constitutions of the FRY guarantee the freedom of public expression of opinion. However, unlike international instruments, the freedom of the press and other mass media in FRY is covered by separate provisions in all three constitutions. The FRY Constitution prohibits censorship and indicates the circumstances under which the media can be restrained. The constitutions also do not follow international treaties in their entirety and do not refer to the freedom to seek and receive information regardless of borders and the medium of transmission. This gap is strongly felt in practice, especially by journalists who are faced with arbitrary refusal of information and access to events.

2. New Limitations of the Freedom of Expression in Serbia - the 1998 Legislation on the Media

"The Decree on Special Measures in the Situation of Threats to our Country of NATO Armed Attacks" 1/

3. At the beginning of October 1998 the crisis involving possible NATO armed attacks against targets in Serbia and Yugoslavia was at its peak. The Serbian Government orally forbade the electronic media to retransmit the broadcasts in Serbian of some foreign radio and television stations (Voice of America, Radio Free Europe, Deutsche Welle, BBC and France International); they also announced a corresponding "formal decision of the Government".

4. Thereupon, the Official Gazette of Serbia published on 8 October 1998 a decree which obliged the media "to act in accordance with the rights and duties of citizens to protect territorial integrity, sovereignty and independence of the Republic of Serbia and the Federal Republic of Yugoslavia" (art. 7). It also prohibited "rebroadcasting of parts of programmes, i.e. programmes and texts of foreign media, which act against the interests of our country, spread fear, panic and defeatism, or negatively affect the readiness of citizens to protect the integrity of the Republic of Serbia and the Federal Republic of Yugoslavia". The decree further forbade the media "to spread defeatism and act contrary to the resolutions of the Federal Assembly and the Peoples' Assembly of the Republic of Serbia" and instructed them "to use their programmatic content to oppose such activity of other means of public information". The decree prescribed sanctions for the violations of its provisions: they amounted to temporary suspension of work and confiscation of equipment. Sanctions were to be imposed by the Ministry of Information, and not by a court, as provided by the Constitution of Serbia.

The New Public Information Act of the Republic of Serbia

5. On 20 October 1998, the Peoples' Assembly of Serbia adopted a new Public Information Act. 2/

6. Three groups of provisions of the Act have caused major concern to commentators and representatives of the media. Their objections are related to administrative proceedings against the media, misdemeanours and their punishment, and the prohibition of rebroadcasting.

7. Administrative proceedings against the media, prescribed by the new Act, have been compared to summary trials. Magistrates have only 48 hours at their disposal to decide on the guilt and liability of the media and of the responsible editors. After receiving a complaint, the magistrate must set a hearing within 24 hours and announce a decision within the next 24 hours. In the proceedings, which are criminal in nature, there is a presumption of the guilt of the accused, who is not allowed to prove the veracity of the statements he or she has published. If the magistrate imposes a fine, the convicted person is left only 24 hours to pay - after that the property of the convicted medium or the responsible person will be impounded. This property will be auctioned within seven days.

8. The scope of sentences available to the magistrate under the new Act has also given rise to serious concerns. The seminal Misdemeanours Act provides for maximum and minimum sanctions for petty offences; however, the new Act prescribes fines which exceed the maximum limit by more than 400 times.

9. The ban on rebroadcasting of foreign programmes "with a political-propagandistic content" was transferred to the Public Information Act (art. 27) from the Decree which preceded it.

3. The establishment and operation of electronic media

10. The greatest difficulties with the implementation of the freedom of expression and information in Yugoslavia and Serbia have occurred in the work of electronic media. Provisions on the establishment, beginning of operation and activity of electronic media are dispersed in many federal and republican acts and regulations. They are often incoherent or controversial and have created a situation where it is practically impossible legally to establish and manage a private radio or television station. It should be noted that provisions on the operation of electronic media in FRY, and in particular in Serbia, grant large privileges to the State electronic media (public enterprises for radio diffusion); the latter practically have a free hand in using frequencies. On the other hand, Montenegrin legislation is much better adapted to international standards.

11. Under the existing provisions at various levels it has been practically impossible for private persons to establish electronic media. This barrier is of a legal nature. Under such circumstances, the freedom to receive and impart information and ideas of all kinds has been restricted in Yugoslavia on grounds not referred to in article 19.3 of the International Covenant on Civil and Political Rights.

4. Relevant Criminal Legislation

12. The nature of the restrictions imposed in Yugoslavia on freedom of expression and information can be best observed by perusal of the Criminal Code of Serbia, which in many respects departs from international standards and facilitates criminal prosecution and intimidation of journalists and the media. Some offences are described in such a way as to include exculpation if the act was committed in the exercise of the profession of a journalist.

13. A particularly restrictive clause is found in the description of the offence of "circulating false information", contained in the Serbian Criminal Code (art. 218, para. 1):

> "A person making public or reproducing false information or statements with the intention to cause malaise or disquietude among citizens or to endanger public order or peace, or with the intention to obstruct the execution of decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures will be punished by imprisonment of a maximum of three years."

Thus formulated, the criminal offence of circulating false information offers a wide opportunity to the authorities to prosecute anyone who utters statements which they find objectionable.

14. Stipulating that circulation of false information is punishable if there is an intention "to cause malaise or disquietude among citizens" is very general and vague. Bearing in mind that Yugoslav courts in such cases will not apply the principle of proportionality, this formulation is not consistent with the international obligations of FRY.

15. The offence of circulating false information "with the intention to obstruct the execution of decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures" is defined in such a manner as to facilitate the prosecution of political opponents. In Yugoslav law, especially because of the absence of the principle of proportionality, there is no guarantee that such a broad wording will not be used to suppress opinions found unacceptable by the authorities and to restrain political debate.

16. The definition in the Serbian Criminal Code of the offence of "illegal possession and operation of a radio station" deserves to be quoted:

> "A person possessing a radio station in violation of the provisions on the system of communications or operating such a station without permission, will be punished by imprisonment for up to one year. An offender under paragraph 1 of this article, making public or circulating false information or statements which have led or could have led to the disquietude of citizens or to a threat to public order or peace, will be punished by three months to three years of imprisonment.

"If the criminal offence contains the features of the offence described in article 218 of this Code, or if it resulted in present disquietude of citizens or threat to public order and peace in a wider area, the perpetrator will be punished by one to eight years of imprisonment."

This is a very severe incrimination in view of the legal impossibility of obtaining permission to own and operate a radio station (see paras. 10 and 11 above.

Notes

1/ Slu beni glasnik Republike Srbije, 8 October 1998.

2/ Slu beni glasnik Republike Srbije, 36/1998.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

GE.99-10532 (E)

1. The International Federation of Human Rights (FIDH) and its Northern Ireland affiliate, the Committee on the Administration of Justice (CAJ) believe that issues of justice, rights and fairness are at the heart of the conflict in Northern Ireland and must therefore be central to efforts to resolve it. We believe the establishment of the rule of law and protection for human rights are vital to this task.

2. Accordingly we very much welcome the Good Friday Agreement of April 1998. The Agreement gave institutional expression to the need to protect rights by providing for a new human rights commission, a commission on policing and a review of the criminal justice system. In addition the Agreement placed an obligation on government to promote equality of opportunity.

3. The Agreement makes regular reference to the importance of international human rights standards. It is therefore vital that the United Kingdom comply with those standards by, inter alia, implementing the recommendations of the Special Rapporteur on the independence of judges and lawyers in his report on Northern Ireland, which was presented to the Commission last year, and the recommendations of the Committee against Torture in November 1998. Additionally we urge action to remedy a number of outstanding human rights concerns, many of which have been the subject of previous comment in the Human Rights Committee (1991 and 1995), the Committee against Torture (1991 and 1995), the Commission on Human Rights (1993, 1994 and 1996), the Sub-Commission (1992, 1993, 1994 and 1996) and the European Committee for the Prevention of Torture (1994) and have been the cause of several adverse findings against the United Kingdom in the European Court of Human Rights.

4. Regrettably the Government of the United Kingdom has failed to respond adequately to these concerns.

Report of the Special Rapporteur on the independence of judges and lawyers

5. FIDH and CAJ have previously expressed concern at the continuing allegations that some police officers threaten and abuse lawyers via their clients in a manner entirely inconsistent with the Basic Principles on the Role of Lawyers. We had also expressed concern that the killing of prominent defence lawyer Patrick Finucane amidst concerns of official collusion remained unresolved.

6. The serious nature of these concerns was such as to persuade the Special Rapporteur on the independence of judges and lawyers to conduct an on-site investigation in October 1997.

7. In April 1998 the Special Rapporteur presented his findings to the Commission on Human Rights. He concluded that police officers in Northern Ireland had engaged in systematic abuse of defence lawyers. He said that there should be an independent judicial inquiry into the murder of Patrick Finucane to resolve the outstanding questions of official involvement

in his murder. We support these conclusions and the view of the Special Rapporteur that respect for the rule of law and human rights enhances the prospects for a peaceful resolution of the conflict in Northern Ireland.

8. The Special Rapporteur also made a number of other important recommendations in section VIII of his report. We endorse them all, and in particular urge the Government of the United Kingdom to take immediate action in order to bring about:

An end to deferral of access to legal advice for those held under emergency laws;

The introduction of legislation to give suspects the right to have a solicitor present during all police interviews;

The immediate restoration of the right to remain silent under police questioning and to refrain from testifying in self-defence without adverse inferences being drawn from such silence;

The extension of the PACE standard for the admissibility of confession evidence to all cases;

The restoration of the right to trial by jury;

An end to the practice of closed prison visits in England and Wales;

The exemption of lawyers' offices from official surveillance; and

Training on international human rights laws and norms for the judiciary and the police.

9. We note that in its official response to the Special Rapporteur's report the Government of the United Kingdom, although it welcomed the report, did not make a single proposal for any new action in order to implement its recommendations. We were profoundly disappointed by this lack of any positive response and hope that on reflection the Government will give serious consideration to the grave issues raised in the Special Rapporteur's report and will draw up specific plans for implementing his proposals urgently.

Committee against Torture

10. FIDH and CAJ also welcome the conclusions and recommendations of the Committee against Torture in relation to the United Kingdom, issued on 19 November 1998. While welcoming the peace process, the Committee identified the continuation of the state of emergency in Northern Ireland as the sole factor impeding the application of the Convention against Torture in the United Kingdom. In this regard FIDH and CAJ are concerned that the United Kingdom continues to derogate from the International Covenant on Civil and Political Rights and from the European Convention in respect of the powers which allow for seven-day detention without being brought before a court. The continuing derogations are in spite of a massive reduction in the level of the

security threat and ceasefires by the main paramilitary groups. Indeed FIDH and CAJ are particularly concerned at an increase in the use of extended detention under the emergency legislation in the third quarter of 1998 (the last for which figures are available) when 156 people were detained under the Prevention of Terrorism Act in Northern Ireland; 26 individuals were held for more than the permissible time prescribed by the European Court of Human Rights (Brogan v. UK); 17 were held for more than six days and 13 of that number were released without charge.

11. The Committee against Torture also expressed its concern at the rules of evidence in Northern Ireland, which admit confessions of suspected paramilitaries at a lower test than in ordinary criminal cases. The Committee called for the closure of the detention centres and particularly Castlereagh at the earliest opportunity. In addition the Committee recommended the reconstruction of the Royal Ulster Constabulary so that "it more closely represents the cultural realities of Northern Ireland". It was suggested that this should be combined with an extensive programme of re-education for officers.

12. FIDH and CAJ believe it is vital that the Government respond positively to the recommendations of the Committee against Torture. As the Committee said, there are no exceptional circumstances which "can ever provide a justification for failure to comply with the Convention [against Torture]". We believe that the continued existence and application of emergency laws will inevitably result in more violations of the United Kingdom's international human rights obligations. Our concern has been heightened by the passing of new and more extensive emergency legislation following the horrific Omagh bombing in August 1998. The Criminal Justice (Terrorism and Conspiracy) Act allows for the opinion of a senior police officer to be admitted as evidence that an individual is a member of an illegal organization. This "evidence" combined with the silence of the accused may be sufficient to secure a conviction.

13. The Government recently published a consultation paper on counter-terrorist legislation. It appears that the intention is to replace the current legislation with one piece of permanent legislation to cover the whole of the United Kingdom, with the possibility of additional powers in Northern Ireland. It appears that this will amount to an entrenchment of current emergency powers which will not comply with the Government's international human rights standards.

14. The Committee against Torture also called for the abolition of plastic bullets as a means of riot control. We strongly endorse this recommendation: 837 plastic bullets were fired in eight days between 4 July and 14 July 1998. No deaths occurred, but several serious injuries were sustained, including by one young woman who lost her eye. Extensive upper body injuries were recorded, despite the fact that the guidelines require that the lower body should be targeted. FIDH and CAJ believe that plastic bullets are lethal weapons which pose an unacceptable threat to life. We respectfully request the Commission to urge the United Kingdom to comply with the recommendation of the Committee against Torture and withdraw this weapon from use.

Conclusion

15. FIDH and CAJ believe that the cornerstone for a peaceful and democratic society must be respect for the rule of law. We believe it is essential, if lasting peace is to be established in Northern Ireland, that the Government of the United Kingdom act immediately on the recommendations of the Special Rapporteur of the independence of judges and lawyers, Mr. Cumaraswamy. Additionally, the Government should swiftly implement the recommendations of the Committee against Torture (1995 and 1998) and those of the Human Rights Committee (1995) and dismantle the apparatus of emergency laws currently operating in Northern Ireland. We respectfully request the Commission to urge the Government of the United Kingdom to comply immediately with its international human rights obligations in this regard.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council Resolution 1996/31.

[11 January 1999]

GE.99-10745 (EXT)

Administration of justice in Peru

1. The International Federation of Human Rights Leagues, dismayed by the human rights situation in Peru 1/, more specifically regarding the adminstration of justice, organized an international investigation mission from 3 to 11 August 1998, in co-operation with APRODEH (Asociación Pro-Derechos Humanos). The mission's remit was to evaluate the situation of Peru's Judiciary, the functioning of criminal justice and the status of human rights, especially in prisons. During the mission, members met with numerous representatives of the authorities and the country's main institutions, as well as with prisoners and their relatives and prison officials.

Dismantling of democratic institutions

2. The institutions are subject to constant manipulation. The desire to control tne Judiciary and artifically create juridical conditions for a third election of the current President, Mr. Fujimori, has induced a section of the political class to dismantle the democratic institutions. Hence, the Constitutional Court, down to four of its seven members, owing to the removal of three of them (authors of a decision that would have blocked the re-election), is incapable of ensuring the constitutionality of the laws, for lack of the necessary quorum. Any constitutional and legislative apparatus that guarantees the independence of the Judiciary has been neutralized by the creation of a parallel structure, the Judiciary Executive Commission with an Executive Secretary (which exist in identical form where the Bench is concerned) that together reduce the role of the National Judiciary Council to a mere sinecure. The Council has been stripped of its power to nominate and remove magistrates, leaving the way open for permanent intervention by certain sectors of political power in the operation of the judicial machinery, even in its purely court functions. The system of selection, nomination and removal of "provisional" magistrates thwarts the principles of permanence of the Judiciary and of natural judge.

3. The Judiciary Inspection Board, on the pretext of fighting corruption, constitues a court information network that is tantamount to an internal intelligence service. These "anonymous" inspectors, themselves recruited from within the judicial apparatus, are supposed to oversee the conduct of magistrates, lawyers, officials and law students.

4. The court function is performed with no guarantee of independence or impartiality and magistrates who hand down rulings unpalatable to certain sectors of power, notably the military sector, are transferred, displaced or removed from office.

Inaccessibility of a fair trial

5. The guarantee of a fair trial, as provided for in the international instruments ratified by Peru (the International Covenant on Civil and Political

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1/ At the forty-seventh session of the Sub-Commission, the IFHR had already expressed its concern at the impunity and continued violation of human rights in Peru.

Rights and the American Convention on Human Rights) and, to a lesser extent, by the Peruvian Constitution itself, does not currently exist in Peru. It is obstructed by two factors:

a) systematic recourse to special laws and military courts;

b) excessive enforcement of the Code of Penal Procedure to the detriment of rights of defence.

6. The special laws of 1992 concerning high treason and terrorism, followed by the June 1998 decree-law on aggravated terrorism, confer additional competence on military tribunals which is incompatible with the guarantee of trial by an independent and impartial tribunal. The exercise of military justice is, consequently, not restricted to crimes committed by members of the military. The vagueness and uncertainty evident in the definition of those crimes has led to the creation of a discretionary option exercised by the police, who steer the procedure either towards military courts or the ordinary courts. This situation results in denials of competence which lead to abnormal delays and sometimes to violation of the right not to be tried more than once for the same acts.

7. Access to a lawyer during police custody is hedged about with enormous difficulties, which assume particular importance when military tribunals are involved. Furthermore, the Government Procurator's Office is not really represented at interrogations. Police custody prior to appearance before an examining magistrate therefore becomes a period of virtually total isolation, thus facilitating the use of pressure and even torture. In such conditions, it is not surprising that many confessions are obtained by torture, without the effective presence of either a lawyer or the Procurator's Office. Communication between the accused and counsel is impeded in the prison setting and interpreters are not provided for indigenous inhabitants most of whom do not speak Spanish. The prinicple of cross-examination both of witnesses and co-defendants is not observed. Court rooms have been built inside all prisons. The location of prisons, usually several kilometres outside the town, and the size of the court rooms effectively exclude the public.

Inhumane prison conditions

8. The conditions in which all prisoners are kept include crowding, lack of medical treatment, inadequate food and lack of access to employment and education. Even worse are the conditions in high-security prisons, where prisoners are subjected to an inhuman and degrading prison regime: their cells are insalubrious, unlit, lacking in minimal hygiene and offer no facilities for keeping in minimum physical shape. They also suffer from limited access to walking areas, family visits, information and contact with the outside world. These conditions cannot be blamed on economic difficulties but, rather, on the desire to inflict punishment in extreme conditions, to the point of a prisoner's psychological and even physical destruction. The location and architecture of

the Yanamayo and Challapalca detention centres were deliberately chosen with that in mind 2/.

9. Where minors are concerned, decree-law 899 of May 1998 (which provides for imprisonment from three to six years for serious offences committed by minors between the ages of 12 and 18) flouts the provisions of article 37 of the Convention on the Rights of the Child (ratified by Peru, however) which considers that the arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest period of time. In Tocache, detention prior to appearance before a magistrate (that may never take place)is spent in a collective jail in which men, women and children are herded together, sometimes for several days.

Examination of petitions, review of decisions and reparation to innocent victims

10. The hope of openness heralded by the creation of the paradoxical "pardon commission for persons convicted of terrorism or high treason" on the basis of "insufficent evidence, which suggests tht they had no connection with terrorist sympathizers, activities or organizations", must not recede. Despite the opaqueness 3/ and slowness of its procedures, the limited duration of its mandate and the inadequacy of its competence (which should be extended to persons who received excessive sentences and to those - sometimes whole village communities - who, when they are the subject or searches or warrants of arrest, are obliged to go underground and become vulnerable to blackmail), this commission is at present the only alternative to terrible injustices. Those pardoned by this ad hoc commission are yet to receive any reparation or assistance from the authorities, even though their innocece has been recognized.

Failure to respect international recommendations and decisions

11. Peru is the Latin American country with the most proceedings against it before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. None of the Commission's recommendations concerning individual cases have been implemented by the Peruvian Government and the opinions of the United Nations Human Rights Committee have suffered the same fate.

2/ Situated 4,200 and 4,800 metres above sea level, these establishments are built of concrete and lack heat insulation, heating, hot water or even running water.

3/ Prisoners are not informed of the status of their files. Petitions are filed away unknown to the prisoner.

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CIVIL AND POLITICAL RIGHTS

Written statement submitted by the Andean Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

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* Translation supplied by the submitting organization.

GE.99-10555 (E)

1. In the Andean countries, the strengthening of the democratic institutions and the effective exercise of human rights is a task performed amid difficulties and interferences. Thus, it is necessary to strengthen of all the means favouring a State in which the rule of law fully prevails and to acknowledge the personality of the citizens as active subjects with rights and duties.

2. Excluding Colombia, political violence diminished and the population claims for a higher respect towards human rights. This does not mean to put a blind eye on other phenomena affecting human rights. Such as the impunity, the lack of guarantees for an independent, fair and fast justice, the increase in crime rates and in the lack of safety for citizens, the situation of prisons, and the serious impact on the exercise of economic and social rights.

3. As part of their pending agenda, the Andean States must provide a final solution to the impunity resulting from the amnesty laws passed in several of such countries in favour of those responsible for the violation of human rights.

4. Despite their efforts to improve justice administration and the reform procedures under application, problems persist and substantial levels of disapproval and distrust subsist among citizens with regard to the judicial system. Moreover, political interference in the justice administration system is evident in some countries.

5. On the other hand the situation in prisons does not show great advances. Riots, overcrowding and the disproportionate increase in the number of inmates due to the fact that criminal control policies are getting tougher, are important signs of this reality. A decrease in the high ratio of non-sentenced prisoners through laws setting a maximum limit for temporary detention pending trial may be a measure to improve this situation, together with a greater celerity in the trials.

6. As for **Bolivia**, this country has made remarkable advances in the institutional strengthening area through the election of the Ombudsman (Defensor del Pueblo) and the members of the Constitutional Court. However, the enforcement of the drug control policies and the police response to social conflicts affects, in certain occasions, the human rights of the population due to actions that have involved an excessive use of force by the police officers. Drug dealing also had an impact on the situation in prisons and uncovered the link between prison overcrowding and the enforcement of Law 1008.

7. In **Chile**, the detention of General Augusto Pinochet showed that the struggle against impunity is still an issue to be solved there, as well as in Colombia and Peru. It also showed the illegitimacy of the self-amnesty law passed in 1978 and the urgency of an International Criminal Court to prosecute those responsible of serious violations of human rights. This case also evidenced the huge weight that the armed forces still have in the process of democratic transition. Nevertheless, in relation to impunity, an important precedent has been set by the Supreme Court that in 1998 ruled that the

amnesty law was not applicable to some concrete cases under its jurisdiction and ordered the procedures to continue until the full identification of the responsible parties.

8. In **Colombia**, political violence persists and consequently the situation of human rights is still one of the main objects of interest of the international community. The confrontations have increased both in number and intensity. Nevertheless, the will to dialogue expressed by different parties may let us think that peace could become the main objective, even though it is too soon to guarantee that pacification will become a reality.

9. It is evident that it is still necessary to support the efforts of Colombia to re-establish a full and effective exercise of human rights resulting in a sustained peace, and consequently it is critical to guarantee the continuity and strengthening of the representation in Bogotá of the Office of the High Commissioner for Human Rights.

10. However, as for an issue with critical importance such as the insecurity situation in which the defenders of human rights work in Colombia, no political or legislative measures have been taken to guarantee their life and work. Other concrete measures must be taken in relation to the reform of military justice, the typification of the crime of forced disappearance of persons and genocide, the abolition of faceless judges and the prevention of forced displacement.

11. In **Ecuador**, the new Constitution has included important provisions in relation to the protection of human rights, both in the substantial part and in the procedures for their defence. Nevertheless, cases persist of violation of human rights by police officers, especially in those zones with high rates of criminality. Even though it can be seen that the Ecuadorian Government has a clear will to comply with its international commitments in the field of human rights, the excessive force with which police officers act is worrying.

12. **Peru** is one of the Andean countries that generates the greater number of concerns. The confrontations between the armed forces and the subversive groups continues diminishing and the cases of forced disappearance of persons, extrajudicial executions and arbitrary detentions have shown a remarkable reduction. However, those institutions in charge of guaranteeing the respect to legality and human rights are under permanent attack, and consequently the capacity to control the enforcement of laws is seriously deteriorated. Add to this the worrying expansion of the competencies of Military Justice, the persecution against renowned persons opposed to the Government, the attempts against freedom of speech, and the veto to the referendum as a right of political participation of the people.

13. All this of course must not make us forget the positive developments in 1998, such as the procedures carried out by the People Defender's Office, the typification of the crimes against humankind and torture, or the extension of the terms given to the Ad Hoc Committee for the recommendation of amnesty for those persons mistakenly sentenced for terrorism crimes.

14. In **Venezuela**, despite the efforts made by the Government, the situation in prisons did not improve. However, the judiciary reform and the put in force of the new Code for Criminal Procedures may in the future help to improve to a certain extent the serious crisis in a penitentiary system that for years has been the weakest point in the full and effective exercise of civil and political rights. As in previous years, the main violations of human rights were committed by police officers, which shows the deficiencies in the operation procedures of the police forces.

15. The complex situation of human rights in the Andean region and the fact that it is repeated at a higher or lower level in different parts of the world, makes it difficult for the United Nations to provide an effective and close attention to all the events and situations submitted to it for its consideration. Consequently, the rationalization of the international supervision mechanisms of the Human Rights Commission must be aimed at strengthening them in relation to the particular nature and contents of the different rights and the situations under its jurisdiction. It is obvious that the organization requires to undergo certain adjustments in relation to administration and budget rationalization. However, this must in no case imply a subordination of or a decreased attention to the protection and promotion of human rights, which is one of the main objectives of the existence of the United Nations.

16. It is also important not to forget that the Special Rapporteurs and Working Groups must not only focus their work on the situation of human rights when there is already a detriment in the exercise thereof. They must have mainly a role of permanent observation worldwide of the issues under their mandate in order to act in a preventive manner whenever signs may appear of situations that could in the future degenerate into one threatening human rights. In the concrete situation of the Andean countries, where, for instance, 11,000 cases of persons disappeared in a forced manner or against their will exist, it would be counter-productive to convert the Working Group on Forced or Involuntary Disappearances into a Special Rapporteur. Reality shows that such a measure would not be the most adequate manner of rationalization.

17. Concretely, torture, forced and involuntary disappearance, arbitrary detention, lack of independence of the judiciary, impunity, not only in the Andean region but in the whole world, make it necessary not only a punctual and determined action from the United Nations in all its areas but also require to reinforce the mandates in force.

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1. Even though sustained advances have been attained in the Andean Region within the struggle for women's rights, it is obvious that there is still much to be done in order to achieve a real gender equality.

2. Together with the cultural stereotypes that relegate women and subordinate them to men, economic barriers force women to work from when they are very young, which prevents women from using an adequate part of their time and resources for their education. These factors translate into abuse and violence against women that the States and the international community are obliged to sanction and eradicate.

3. Despite the fact that women account for around 50 per cent of the Andean population, their participation in public life is not proportionally fair. Although some women have recently achieved political positions of great relevance, this must not lead us - despite its positive significance - to make a generalization about the role of women in decision-making spheres.

4. In Bolivia, Ana Maria Romero was appointed as the first Ombudsman (Defensor del Pueblo), while Teresa Rivero and Martha Villazón were appointedas two of the four members of the Judicature Council. In Chile, only two women participate in tne Senate and 13 in the House of Representatives. Colombian women show an important but insufficient presence: in the House of Representatives, 19 of the 167 representatives are women; in the Senate only 14 of the 102 senators. At the municipal level, women only lead 5 per cent of the 1,072 municipalities in the country.

5. At the presidential level in Colombia, Noemi Sanín achieved an interesting 26.89 per cent of the votes, a figure that despite leaving her aside for the second round seems to have consolidated her as an interesting politician. On the other hand, being the first time that two women ran for the Presidency in the Republic of Ecuador, neither Rosalía Arteaga nor María Eugenia Lima received a majority support. Each of them achieved a meagre 2.02 per cent of the national votes, a figure which coincides with the elections for the Congress where, of the 20 national representatives elected in 1998, only three women achieved a seat. In Venezuela, Irene Sáez, who had initially had an important support in the polls, only obtained less than 4 per cent in the December elections.

6. Although the regional scenario shows, at a first glance, an increase in the political presence of women, it is necessary to acknowledge that there is not a generalized phenomenon of women's participation in the political decision-making spheres. One of the "affirmative actions" favouring the increase in women's participation could be the system of the so-called electoral quotas applied in 1998 during the political processes in Peru and Venezuela.

7. Although the electoral results have not been the most favourable - in the Peruvian case, for instance, only 3 per cent of the district mayors at national level are women - the experience with a legal provision about women's quotas can be considered positive since it promotes the presence of women in public life giving them the possibility to have access to decision-making positions. Nevertheless, it is necessary to carry out corrective measures in order to guarantee that such positions will be actually accessed by women.

Such measures include an adequate interpretation of the legal provisions on quotas and an explicit statement about the location of women within the lists, in order to avoid the risk that women will be included in the lists only in order to formally comply with the law but locating them in the lower part of the lists without any real possibility of being elected.

8. As for gender-based violence, this is a form of abuse that keeps preventing women from enjoying their rights in equal terms. It tints the experiences of women within the family, the community and the society not as an isolated event but as an answer to the set of social relations and cultural values that put women in a situation of subordination to and dependence on the male, which are reproduced through the socialization and the daily learning of the roles assigned to men and women.

9. In January 1999, the Law on Violence against Women and the Family was put in force in Venezuela. Thus, all the countries in the Andean region have now explicit laws about the issue of violence against women. Nevertheless, just the existence of such provisions is not enough to fight against this situation. The first steps in this struggle include overcoming problems such as the underfiling of claims due to the lack of knowledge or the fear of the affected party, and the persistent belief that domestic abuse is a private family issue.

10. Therefore, besides the legislative measures on violence against women, practical actions must be carried out in order to make a real diagnosis and to design a comprehensive strategy against violence that may revert the situation in all its aspects based on an education policy that does not transmit messages of violence and subordination against women. It is necessary to carry out complementary measures, such as the establishment of police stations for women's claims, shelters and multidisciplinary teams working on family violence. The subsequent material and psychological support for women that are victims of violence is also critical.

11. As for sexual violence, one of the most repulsive forms of violence against women, some legal amendments are being put forward in the Andean region in relation to the criminal procedure. Specifically, in Bolivia and Peru, an amendment is being discussed so that rape against adults will stop being a private criminal proceeding and will become a public criminal proceeding. Should these amendments be made, it would be achieved, for instance, that rape events will stop being considered an offence possible to be settled and will be recognized as an attack against sexual freedom that can be prosecuted by the State rather than exclusively by the affected party.

12. This proposal, together with the elimination of the participation of the victim in the reconstruction of the facts and the obligatory confrontation with the aggressors during the criminal proceedings, especially in the cases of rape of minors, would be appropriate legislative measures to achieve that criminal proceedings may fulfill the objective of administering justice in an adequate manner, without generating impunity for the aggressor or a double victimization of women.

13. As for sexual harassment, in Ecuador this was not considered a crime despite the fact that it is one of the most frequent attacks on women. In

1998, the Congress amended the Criminal Code in order to include this crime. Meanwhile, in Peru, this issue is being discussed based on a bill that prevents and sanctions sexual harassment in working places, enabling the harassed person to denounce the facts before the employer, the labour authority and the Judiciary.

14. The Andean societies have shown advances in the situation of women but the slow pace to make these achievements and the persistent needs and expectations of women determine that the aspirations to a gender equality must maintain their priority in the political agendas of the region's governments and in international cooperation.

15. One of the greatest challenges is that all government officers must know the national and international provisions on human rights and must be able to apply them in their daily actions from a gender perspective. This is especially important in the case of justice operators, who have the responsibility of applying the Law without being influenced by cultural stereotypes or discriminatory points of view against women.

16. The situation of disadvantage in which Andean women are living has its origins in cultural patterns that must be reverted. Without a strong investment in education and health services by the governments with the support of international cooperation, women will not have real possibilities to compete on equal terms with men for access to the labour market. Being a woman must not be an obstacle for the personal development of a human being in any respect.

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Fifty-fifth session
Item 18 (b) of the provisional agenda

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS

Written statement submitted by the Andean Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

* Translation supplied by the submitting organization.

GE.99-10567 (E)

1. The Andean Commission of Jurists, in compliance with its institutional objectives, decidedly promotes and supports those institutions that through their acts in the society help to keep in force the Rule of Law and to make citizens be aware of the exercise of human rights.

2. Consequently, the Andean Commission of Jurists underlines the work of the Ombudsman (Defensor del Pueblo) and the Constitutional Courts, agencies that in the last years have been assuming an increasingly important role in the national life of the Andean countries, being remarkable the institutional achievements made despite the difficulties and situations such as those affecting the Peruvian Constitutional Court.

3. As for those institutions conceived for the defence of the Constitution (on which they are the ultimate interpreters) and the human rights (since they are the last instance in relation to proceedings regarding constitutional guarantees), the trend in the Andean region is to assign this task to specialised Constitutional Courts. This has happened in Chile, Colombia, Ecuador, Peru, and more recently in Bolivia. In Venezuela, this function is performed by the Supreme Court.

4. In Bolivia, although this institution is to begin operating in August 1999, according to the constitutional development law that states its functions, the magistrates appointed by the Congress must organise themselves to begin their functions, and for this it is necessary to have the appropriate financial support and the respect to their function by the public institutions.

5. In the case of Chile, its Court does not necessarily have the function of protecting human rights since its competence is limited basically to prevention and consultation aspects. Consequently, it is justified to assess the necessity to give such Court the power to make judgements in relation to the protection of human rights.

6. The institution that has shown the highest development and strength in this area is the Constitutional Court of Colombia, both in the development of jurisprudence and in its acceptance by the juridical community and the citizens. Its resolutions have not been limited, in general terms, to the democracy and human rights issues only but they have also given a juridical answer to the political problems that the Colombian society had to face. Its statements on the contents of the human rights, their scope and limits, as well as the continuous application of the International Law on Human Rights turn the jurisprudence of this institution into an indispensable point of reference for the work developed by similar institutions in the region.

7. The Constitutional Court of Ecuador has submitted proposals for legislative amendments that would allow it to improve the performance of its activities in order to get consolidated as the supreme instance to guarantee the maintenance of the Rule of Law and of the human rights in this country. Nevertheless, these proposals have not been accepted yet by the Legislative.

8. In the case of Peru, the Constitutional Court is still incomplete and does not have the number of members required to issue resolutions on the constitutionality of the laws. In this regard, the Inter-American Human

Rights Commission has urged the Peruvian State to immediately reinstate the three magistrates that were removed in 1997 after they issued a resolution about the impossibility of new re-election of President Alberto Fujimori.

9. As it can be seen, the work of this instance of supreme interpretation of the Constitution in the Andean region has different levels of development and requires support in order to fulfil its corresponding role. A greater political will is needed to give it legal tools that may consolidate its independence and facilitate a fluid communication with the people. On the other hand, means should be found in order to prevent the interference or influence from other power spheres trying to impede it to become a guarantor of the legality and human rights.

10. It can be said that 1998 was a year of strengthening of the institution of the Ombudsman (Defensor del Pueblo).

11. In Bolivia, the Ombudsman's Office began operating last October. The expectations of the people in relation to this institution have been high. Consequently, from the very beginning, it has received a huge number of requests regarding different matters. The most outstanding are those related to the situation of the coca growers and the denounces of abuses carried out by the police force against the civil population during public manifestations.

12. On the other hand, Ecuador also took an important step with the appointment of the new Ombudsman last September. It is also noteworthy that the Ecuadorean Constitution approved in 1998 gives a new power to the Ombudsman, i.e. "the supervision of the quality of the public services", a task that is very important in the region since all our countries have undergone in the last years processes of privatization of public services, such as electric power, drinking water, telecommunications, etc.

13. Simultaneously, in Colombia and Peru an institutional consolidation of the People Defender is being perceived. This is clear from the great number of problems considered in the claims that are submitted to these institutions, as well as the direct and permanent presence of citizens in the People Defender's Office. This shows the degree of acceptance and legitimacy of the work developed by these institutions for the non-jurisdictional protection of human rights.

14. In the case of Colombia, due to the situation of violence that is lived in this country, the presence of the Ombudsman has a great importance. Delegations from his Office have been present in the armed conflict zones in order to verify the presidential order of suspending military actions. Similarly it is not uncommon for the Ombudsman's Office to assume the representation of persons who claim justice before the judicial authorities due to the violation of their rights or those of their relatives in the context of the armed conflict. Consequently, the staff of the Ombudsman, as well as most of the defenders of human rights in Colombia, suffer continuous threats against their human rights.

15. On the other hand, in Peru, the Ombudsman's Office has also had to deal with the issue of political violence, but specially in the scope of its consequences and the social costs of the pacification process. The efforts

aimed at solving the problem of the victims of political violence can be considered as the institutional work that has deserved a special recognition from the people. The Ombudsman's Office takes part in an "Ad Hoc Commission" that recommends the granting of amnesty for those who have been unjustly condemned for the crimes of terrorism and treason to the motherland.

16. In the case of human rights of women, an important activity has also been performed in relation to claims from women who had undergone surgical contraception procedures without having adequate information about the consequences of the use of this technique as a family planning method. The recommendations of not favouring one of the family planning methods, the obligation of the State to give full and adequate information and not to set forced sterilization goals to the different health agencies were assumed by the responsible governmental authority and resulted in a decisive change in the national population policies in Peru.

17. Only two countries in the region do not have an Ombudsman's Office at national level: Chile and Venezuela. Nevertheless, in both countries this issue was specially relevant during 1998, so it is expected that in the next months both countries will incorporate this institution in their corresponding laws.

18. Precisely, in order to increase the co-operation among these institutions, to support the establishment of the Ombudsman's Office in those countries of the Andean region that do not have this institution yet, and to strengthen the human rights culture in the Andean countries, the Andean Council of Ombudsmen was established in September upon the initiative of the Andean Commission of Jurists. The Andean Council of Ombudsmen began its activities with the support to the diffusion of the Ombudsman's Office work in Bolivia and currently it is co-ordinating the technical assistance to the institution in Ecuador.

19. The Andean Commission of Jurists has been appointed to the Technical Secretariat of the Council, a position from which the Andean Commission of Jurists reiterates its commitment to the Ombudsmen of the region, since they are an indispensable element for the consolidation of the democratic institutions and for the defence of human rights.

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Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement submitted by Amnesty International, the International Federation of Human Rights Leagues, Human Rights Watch and Reporters sans frontières, international non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council Resolution 1996/31.

[14 January 1999]

GE.99-10599 (EXT)

Situation of human rights in Algeria

1. In April 1998, the Commission on Human Rights, at its forty-fourth session, completed its work without taking any firm measure to address the crisis that has faced Algeria since 1992. The above-mentioned organizations hope that the fifty-fifth session of the Commission will at last make for more active involvement on the part of the international community, so that practical measures are taken to improve the human rights situation in Algeria, notably by putting a stop to massive violations and providing the civilian population with effective protection. Three reasons make this request still necessary today: a) the persistence of the human rights crisis in Algeria; b) the authorities' failure to take specific measures to face up to the grave and widespread violations and to put an end to the impunity enjoyed by members of the security forces, State-armed militias and armed groups responsible for serious violations and abuses; and c) the Algerian Government's continued refusal, despite earlier promises, to cooperate fully with the United Nations human rights protection mechanisms.

A continuing human rights crisis

2. During the countrys seven-year conflict, armed groups operating under a variety names and claiming to be "Islamic" have committed massive and flagrant human rights violations: assassinations of civilians, indiscriminate attacks and massacres. These groups have also raped and mutlilated women and girls and harassed and attacked women whom they accuse of "immoral" conduct, including going out to work or attending school, not wearing the veil and militating for women's rights. The truce called between the authorities and the Islamic Salvation Army (ISA) in late 1997, in circumstances that are still obscure, has done nothing to end the attacks of which civilians are the main victims. Certain armed groups have apparently supported the truce, while others are violently opposed to it. Although this information is not easily verifiable, armed groups nonetheless continue their depredations.

3. Amnesty International, IFHR, Human Rights Watch and Reporters sans frontières have, in the strongest terms, consistently and categorically denounced the murders and other crimes perpetrated by these armed groups and urged the Algerian Government to take the necessary steps to guarantee the safety of the civilian population, in compliance with Algeria's international commitments.

4. During that very period, the security forces made thousands of unlawful and arbitrary arrests, torturing detainees and violating their rights both during police custody and following their appearance before a judge. Thousands of persons in Algeria have disappeared following arrest. Dozens of prisoners have been killed on the prretext of putting down "mutinies" or "attempts to escape" and although many of the large-scale massacres in the countryside have been officially imputed to armed groups, it is disquieting to observe the deliberate refusal to allow the security forces to intervene in certain cases

5. Also, since 1994 the authorities have permiteed State-armed civilian militias calling themselves "patriots" to operate outside the law and carry out so-called "anit-terrorist" military operations in the name of legitimate defence. The law concerning the Legitimate Defence Groups (GLD) which, since

January 1997, encompasses the activities of these militias (put at 5,000 in January 1998 by former Prime Minister Ouyahia) is not observed by the militias, who have continued to commit grave violations with impunity. Hundreds of accounts show that units of the security forces have executed persons suspected of belonging to, or supporting, the armed groups. Likewise, they are alleged to have taken indiscriminate collective reprisals against the inhabitants of areas where attacks had recently been carried out.

6. Added to these entirely unlawful practices, certain laws adopted since 1992 have contributed to large-scale human rights violations: arbitrary arrests, secret detention in unofficial centres, widespread use of torture, summary executions, "disappearances", non-observance of the time frames established for police custody and pre-trial detention, violations of the right to a fair trial, infringement of the right of association and the right to demonstrate and freedom of the press. Thus, the state of emergency proclaimed in February 1992 is still in place, the independence of the Judiciary continues to be drastically limited and disabling provisions under the September 1992 "anti-terrorist decree" are now an integral part of Algerian ordinary law.

Fears confirmed

7. Since early 1998, there has been information confirming the international organizations' diagnosis of some years ago on the scope of the human rights crisis. Former high-level government officials have publicly corroborated reports that certain security forces were involved in grave violations. Hence, in October 1998, the Government confirmed that 27 prisoners had been smothered to death while being transferred from one prison to another in June 1997, a fact made public by a former military security official. During the same period, the existence of secret detention centres was confirmed by the statements of former Moroccan prisoners who had been "disappeaared" in Algeria for 17 years and released in late 1996 through the intervention of the International Committee of the Red Cross (ICRC).

8. After years of silence, the families of thousands of persons "disappeared" after being kidnapped or arrested by the security forces have begun to demonstrate in public and have formed an association. So far, 3,000 cases of forced "disappearances" have been inventoried and dossiers concerning 1,750 of them have been deposited with the Ministry of the Interior. At the time of writing, the Ministry has shed no light on the cases before it, has refused to accept new dossiers or to recognize this association, the statutes of which are in conformity with Algerian law. A number of demonstrations by families of "disappeared" have been broken up by force or refused authorization.

9. In July 1998, the United Nations Human Rights Committee expressed its concern at the human rights situation in Algeria and made the following recommendations to the Algerian Government:

a) creation of appropriate independent mechanisms for investigating violations of the right to life and personal safety and for identifying and sentencing the guilty parties;

b) the creation of a credible monitoring system for preventing the torture of prisoners;

c) establishment of a clearing-house for recording all the reported cases of disappearance and helping families to find disappeared relatives.

Refusal of transparency and cooperation

10. The Algerian authorities have rejected the Human Rights Committee's observations and continue to refuse the United Nations Special Rapporteurs on torture and on extrajudicial, summary and arbitrary executions access to the country; so far the ICRC has still not been authorized to resume prison visits suspended since 1992. The report of the United Nations panel that visited Algeria in July 1998 states that the mission had neither the "mandate nor resources" to conduct investigations and the that Algerian Government had firmly demanded that its observations not be followed up.

Recommendations

11. The signatory organizations request the Commission on Human Rights to appeal to the Algerian Government to take specific measures to provide protection for the civilian population and put an end to human rights violations. With that in view, they call upon the Commission:

a) To appoint a special rapporteur on Algeria;

b) To request that the Algerian Government:

i) Cooperate fully with the United Nations human rights protection mechanisms and that it be encouraged to:

a. implement the final observations of the Human Rights Committee;

b. grant the Special Rapporteurs on torture and on extrajudicial, summary or abitrary executions access to the country and invite the Working Group on forced or involuntary disappearance, as well as the Special Rapporteurs on violence against women and on the independence of the Judiciary, to visit the country.

ii) Hold independent, impartial inquiries on all cases of "disppearance", inform the families of the "disappeared" of their fate and release all "disappeared" persons who are in the hands of the security forces;

iii) Conduct independent, impartial inquiries into all cases of extrajudicial executions and murders and massacres, as well as all cases of torture, and bring those responsible to trial;

iv) Ensure that security operations are conducted exclusively by law-enforcement officers with the necessary training, who shall be required to answer for their actions, and, for that purpose, to dismantle the civilian militias if they are not subject to State control.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: RELIGIOUS INTOLERANCE

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 January 1999]

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* Translation supplied by the submitting organization.

GE.99-10603 (E)

1. The International Federation of Human Rights Leagues (FIDH) and its affiliate, the Vietnam Committee on Human Rights, are deeply disturbed by the treatment of United Nations experts in the course of in situ visits. In the religious domain, 1998 was marked by incidents that hampered the visit of the Special Rapporteur on religious intolerance to Viet Nam.

2. Invited to visit Viet Nam from 19 to 28 October 1998, Mr. Abdelfattah Amor was consistently prevented from visiting non-governmental, independent religious leaders, notably members of the Unified Buddhist Church of Vietnam (UBCV), the Catholic, Cao-Dai and Hoa-Hao Churches. The most serious incident took place at the Thanh Minh Zen monastery in Ho Chi Minh City, where the Special Rapporteur was rebuffed manu militari by security police and obstructed from keeping a scheduled appointment with UBCV Secretary-General Thich Quang Do and two Buddhist scholars, Thich Tue Sy and Thich Tri Sieu, on 26 October 1998.

3. At Z30A Camp in Xuan Loc (Dong Nai), the camp authorities deliberately withheld certain political prisoners from the Special Rapporteur, cynically denying their presence in the Camp (i.e. Catholic priests John Bosco Pham Minh Tri, Bernard Nguyen Viet Huan, Michael Nguyen Van Thin and Buddhist monk Thich Hue Dang). Other dissidents were granted pseudo-amnesties just before the Special Rapporteur's arrival (i.e. Thich Nhat Ban, released 13 days before the end of his prison sentence). A private meeting at the camp between the Special Rapporteur and UBCV monks Thich Khong Tanh and Thich Thien Minh, obtained only after long discussions, had to be cut short because of persistent interference by the camp commander.

4. The FIDH and the Vietnam Committee had requested this visit for many years, and therefore deeply regret the Vietnamese Government's grotesque ill-treatment of the Special Rapporteur. The organizations fear, moreover, that this incident confirms the fears they have repeatedly expressed at the Commission on Human Rights, of a hardening in the Vietnamese Government's anti-religious policy. This policy, now directly under the control of the Communist Party of Vietnam (CPV), no longer even pretends to protect common interests. The Politburo's "Directive on religious affairs in the country's new stage of development" (2 July 1998) legalizes current practices of religious repression, and postpones yet again the elaboration of the much-awaited framework legislation on religious activity which the different religious denominations incessantly request.

5. The FIDH and the Vietnam Committee are further concerned by the provisions of the "Draft decree on religious activities", a copy of which they obtained in November 1998. This draft decree, which is designed to replace the current Decree 69 on religions, demonstrates Viet Nam's arrogant refusal to comply with its international commitments and its persistence in tightening religious controls. The text repeats in substance the provisions of Decree 69, but explicates new details which clearly reveal the totalitarian policy of the regime.

6. Thus, religious activities are authorized only if they do not obstruct "ideological [Marxist] education" and conform with the State's "political line" (art. 9). Under article 4 of the Constitution, the State's political

line is based upon "Marxist-Leninist doctrine and Ho Chi Minh thought", both of which are hostile to religion. Only "progressive" Churches authorized by the Government are allowed to exercise religious activities (art. 13) and their schools are placed under the direction and control of the Government Board of Religious Affairs (art. 14). All ordination, nomination, transfer and training of priests and monks without government approval is strictly forbidden (art. 15). The religious publishing house promised in July 1998 "will be established under the direction of the Government Board of Religious Affairs" (art. 24).

7. The draft decree flatly rejects the constant and unanimous demands of all the religious communities for the return of all Church property (churches, pagodas, lands, cultural and humanitarian institutions, universities, schools, etc.) confiscated massively by the authorities since 1945 under three successive Communist regimes which are enumerated together for the very first time: the Democratic Republic of Viet Nam (North), the Provisional Revolutionary Government of South Viet Nam (1975-1976) and the Socialist Republic of Viet Nam (art. 21). Religious groups are forbidden to make "illegal collections" for the restoration or construction of religious property (art. 19) - although no definition of "legality" is forthcoming in the text. International relations between religious organizations and travel overseas are maintained under strict Government control (art. 27 et al.). Moreover, the ambiguous crime of making use of religion to "undermine the policy of union of all the people" is reinforced by the interdiction of acts deemed to "create public disorder" (art. 7).

8. This draft decree seriously contravenes all relevant international standards. Simply one more tool of systematic repression, it aims to stifle all true spiritual life and deviate followers towards superstition and obscurantism by reducing freedom of religion to the bare minimum of freedom of worship.

9. All Buddhist leaders "amnestied" in autumn 1998 have either been placed under "administrative detention" (Thich Nhat Ban, also Thich Tri Tuu, Thich Hai Tang, Thich Hai Thinh, Thich Hai Chanh "released" previously) or plunged into a state of illegality by the non-delivery of the residence permit (ho khau), indispensable for every citizen's existence: the cases of Thich Quang Do, Thich Tue Sy, Thich Khong Tanh, also Thich Hanh Duc, released in 1996 and subsequently evicted from his pagoda. Moreover, UBCV Patriarch Thich Huyen Quang has been detained without trial in Quang Ngai for the past 17 years. Although the local security police announced his "release" on 28 November 1997, he has not been allowed to return to his former residence in Ho Chi Minh City and was not allowed to meet the Special Rapporteur.

10. These practices, which extend also to the Catholics, Cao Dai, Hoa Hao and Protestants, are backed up by a powerful arsenal of legislation which, under the pretext of protecting "national security", seeks to suppress all religious and political dissent. Alongside the numerous "national security" offences and "abuse of democratic rights and freedoms" punishable under the

Criminal Code, Decree 31/CP (14 April 1997) on "administrative detention" legitimizes the detention of opposition clerics by empowering local security police to detain anyone suspected of threatening "national security" for up to two years without trial.

11. The FIDH and the Vietnam Committee fear that the recent censorship of the Special Rapporteur was motivated by the intent to dissimulate this systematic repression. Many dissidents, Buddhists, Cao Dai and Catholics had prepared documents for the Special Rapporteur on the religious situation in Viet Nam. Since they were prevented from meeting Mr. Amor, they sent these documents clandestinely to the Vietnam Committee on Human Rights for forwarding to the Special Rapporteur. UBCV dignitaries Thich Quang Do (document dated 25 October 1998), Thich Tue Sy (25 October 1998), Thich Nhat Ban (25 October 1998), Thich Tri Tuu (10 October 1998), Thich Hai Chanh (22 October 1998), along with the Buddhist "Sangha for the Protection of the Faith" (20 October 1998) and 29 monks from Linh Mu Pagoda in Hue (19 October 1998), wrote to the Special Rapporteur to describe violations of religious freedom, often citing first-hand experiences, and called for their grievances, unheeded by the Vietnamese authorities, to be remedied. These include:

(a) To release UBCV Patriarch Thich Huyen Quang and other prisoners of conscience (Thich Quang Do cites 105 names), end the house arrest of monks released from prison, issue them with residence permits and allow them to carry out their religious activities as before;

(b) To re-establish the right to existence of the UBCV, restore its full freedom of religious activity and return all property, administrative centres, educational, cultural, humanitarian and social institutions confiscated since 1975;

(c) To abolish the obligatory membership of monks and nuns in State-sponsored political organizations.

12. A 17-page document sent clandestinely from Danang by the "Sangha for the Protection of the Faith" denounces the CPV's total control of all religious activities, particularly concerning the 300,000-member "Buddhist Youth Movement" founded by the UBCV in the 1930s. Even one official from the State-sponsored Vietnam Buddhist Church (VBC)*, Thich Quang The in Danang, sent a complaint to the Government and the CPV (Ref. 244/BTS/VP) demanding the restitution of 17 VBC pagodas and schools confiscated by the State.

13. Catholic priest Tran Si Tin, from Chu She diocese in Gia Lai province, told Mr. Amor in a letter dated 10 October 1998 that he is forbidden to celebrate Mass, hold catechism classes or convene meetings outside his church. Bibles are regularly confiscated, followers harassed, fined or arrested, and

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* Secretariat note: In his report (E/CN.4/1999/58/Add.2), Mr. Amor uses the designation "Buddhist Association of Viet Nam".

tight restrictions have been placed on seminaries and recruitment of new seminarians. He cites two churches in Kontum confiscated by the State and a chapel destroyed in Gia Lai. He also complains of the lack of a Catholic press, the only two magazines currently in existence being propaganda tools of the CPV.

14. Whilst Mr. Amor met representatives of the State-sponsored Cao-Dai Church in Tay Ninh, police sequestrated two priests, Thai The Thanh and Thuong Thien Thanh, in their homes. In Ho Chi Minh City, police detained Cao Dai priest Le Quang Tan to prevent him meeting the Special Rapporteur.

15. The FIDH and the Vietnam Committee express their full support for the Special Rapporteur on religious intolerance. The organizations call on the Commission on Human Rights to strongly condemn these acts and urge the Vietnamese Government to fully cooperate with its special thematic procedures.

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1. Franciscans International, the Dominicans, the Commission of the Churches on International Affairs of the World Council of Churches and the World Alliance of Reformed Churches wish to bring to the attention of the fifty-fifth session of the Commission on Human Rights the situation of religious minorities in Pakistan. This paper addresses three areas of serious concern:

(i) The separate electorate for religious minorities in Pakistan;

(ii) Blasphemy Laws 295 B and C of the Pakistan Penal Code;

(iii) The Government's bill to adopt the 15th Amendment (Sharia law).

Background

2. Pakistan came into existence in 1947, following the joining together of the Muslim majority provinces of East Bengal, Punjab, Sind, the North-West Frontier and Baluchistan. This brought together a total population of approximately 95 million people, forming the nascent Federation of Pakistan. (In 1971, East Pakistan became the independent State of Bangladesh.) In his address to the first Constituent Assembly of Pakistan, on 11 August 1947, the founder of the country M.A. Jinnah gave the following assurances to the minorities: "You may belong to any religion or caste or creed that has nothing to do with the business of the State ... Even now there are some States in existence where there are discriminations made and bars imposed against a particular class. Thank God we are not starting in those days. We are starting in the days when there is no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State". It would seem, in the reality of today's Pakistan, that the words of M.A. Jinnah, the Father of the Nation, who led the movement for an independent Pakistan, have lost their significance.

3. The Pakistan of today is a society torn apart by corruption, intolerance and violence, a far cry from the original ideal of a progressive and tolerant country. Religious minorities are increasingly the targets of bigotry, which is often instigated by extremist forces, Islamic political parties and their leadership. The failure of successive Governments to bring under control the religious extremist movement in the country has strengthened their hands. The lack of political will on the part of the Government to put an end to these destructive trends has encouraged these groups to persecute and victimize individuals and groups with impunity. So long as the Government refrains from taking action against the extremist elements for reasons of political expediency, the situation will remain unchanged.

The separate electorates for religious minorities in Pakistan

4. In 1979, the military dictatorship of the late General Zia ul-Haq introduced an amendment to the electoral laws of Pakistan which changed the system of joint electorate, as envisaged under the 1973 Constitution, to a system of separate electorates. The amendment was introduced at the request of the religious-political parties that subscribe to the view that non-Muslims in Pakistan are "Zimmis" or second class citizens. During the past two

decades, successive Governments in Pakistan have followed discriminatory policies that have prevented non-Muslims from holding key positions in the civil service and in the higher judiciary.

5. The system of separate electorates has the effect of denying religious minorities in the country the fundamental right of universal adult franchise. Under this system, a quota of seats is reserved for non-Muslims in the National and Provincial legislatures. This means that non-Muslim voters can only vote for non-Muslim candidates contesting the reserved seats and that they cannot vote for Muslim candidates in the general elections. This policy of discrimination among voters on grounds of religion has cut off the non-Muslim citizens of Pakistan from the mainstream of national political life. Further, it has denied them the right to participate directly in the national decision making processes as well as in the framing of national economic, social and cultural policies. Similar segregation has been introduced at the local levels. We strongly disagree with the rationale that this provision of Pakistani law protects the rights of religious minorities. We see it rather as the institutionalization of discrimination, a form of religious apartheid that officially restricts the rights of Pakistani citizens to participate fully in their society.

6. The system of separate electorates enforced in Pakistan is in clear violation of articles 2 and 21 of the Universal Declaration of Human Rights, as well as articles 25 and 26 of the International Covenant on Civil and Political Rights.

The Blasphemy Laws 295 B and 295 C of the Pakistan Penal Code

7. The Blasphemy Laws in their present form have become a source of victimization and persecution of minorities in the country. Minorities suffer all manner of humiliation through false accusations made under these laws. In the present climate of hate, intolerance and violence in Pakistan, the Blasphemy Laws have become a major tool in the hands of extremist elements to settle personal scores against members of religious minorities, particularly Christians. The Laws themselves provide only a vague definition of blasphemy, yet blasphemy carries a mandatory death sentence in some cases. There are also serious problems with the mechanisms to implement the Laws. Since the mandatory death sentence was introduced as a result of Amendment Act No. III (1986) to Section 295-C, many innocent people have lost their lives, including some accused persons who had not been brought to trial. For example, Niamat Ahmer, Tahir Iqbal and Manzoor Masih were killed even before the courts could hear the cases registered against them. Many victims of the Blasphemy Laws have had to seek safety and sanctuary in countries abroad and others are forced to live in hiding within the country.

8. In the present context, lawyers who appear in court on behalf of accused persons in blasphemy cases are the targets of intimidation and threats. The retired Judge of the Lahore High Court, Arif Iqbal Bhatti, who set aside the death sentence passed by the Session Courts in the case of Salamat Masih, and Rehmat Masih was shot and killed by an Islamic extremist. His killer, like that of Manzoor Masih, has not been brought to justice. In view of continuing

threats and intimidation, it has become increasingly difficult to engage the services of lawyers to defend cases registered under the Blasphemy Laws. In May 1998, Roman Catholic Bishop John Joseph of the Diocese of Faisalabad took his life to protest against the Blasphemy Laws.

9. In the climate of intolerance which prevails and in view of threats and intimidation and the pressures brought on the judiciary, it has become nearly impossible to obtain a fair hearing in Pakistan for those charged under the Blasphemy Laws. In these circumstances, the lower judiciary has often been constrained to accuse and convict persons without proper study of the evidence placed before it. In one case, the Sessions Judge convicted Gul Masih, who was charged under the Blasphemy Laws, and imposed the death sentence on him on the grounds "that the complainant had an outlook of a good Muslim, that he was a college student and that he had a beard". A number of cases are pending under the Blasphemy Laws, including cases against Ayub Masih, Nelson Munawar Rahi, and Catherine Shaheen. In addition, two Islamic religious organizations have announced a prize of PRs. 1.3 million for the killing of Salamat Masih, and Rehmat Masih who are at present living in exile.

10. The Pakistan representatives to the Commission on Human Rights stated that the Government was extremely conscious of the dangers of the Blasphemy Laws and has instituted measures and appropriate safeguards against their misuse. However, recent cases of blasphemy at Gojra, Alipur Chatta (Gujranwala district) and at Toba Tek Singh prove that the procedure for the registration of such cases has not been changed nor have any measures been introduced to eliminate the injustice of the laws. This raises the question of the Government's commitment to real change. The reality is that the police continue to harass accused persons and their families.

The Government's bill to adopt the 15th Amendment (Sharia Law)

11. On 28 August 1998, the Government of Prime Minister Nawaz Sharif introduced a bill calling for an amendment to the Constitution of Pakistan (15th Amendment or the Sharia Bill), according to which the Holy Koran and Sunnah of the Holy Prophet (peace be upon him) shall be the supreme law of the land. The Prime Minister has subsequently been quoted as advocating the adoption of Taleban-style justice as a model of swift punishment and effective deterrence to end violence, crime and corruption in Pakistan.

12. While we acknowledge the Government's declared intention to control corruption through the introduction of the Sharia bill, we remain seriously concerned that in the present climate of intolerance and religious extremism in Pakistan, the passage of the bill will add further to the sense of insecurity of the minorities and will give rise to further sectarian strife within society, leading to more conflict and violence. We therefore ask the Government to withdraw its bill on the 15th Amendment.

13. Further, we, Franciscans International and the Dominicans, the Commission on the Churches and International Affairs and the World Alliance of Reformed Churches, join with the Conference of Catholic Bishops, the National Justice and Peace Commission, the Human Rights Commission of Pakistan and the

inter-religious group, the National Christian-Muslim Coordination Commission, to ask the Commission on Human Rights to urge the Government of Pakistan to protect and promote more strongly the legitimate rights of the religious minorities of Pakistan. Specifically the Commission should urge:

(i) The Government of Pakistan to abolish the system of separate electorates, which is discriminatory in nature and promotes divisions in society on the basis of religion;

(ii) The Government of Pakistan to repeal the Blasphemy Laws, especially 295 B and 295 C of the Pakistan Penal Code;

(iii) The Government of Pakistan to take practical and concrete measures to instil values of religious tolerance in society by removing prejudicial parts of the education syllabi;

(iv) The Government of Pakistan to discontinue on government controlled media any religiously biased programmes that incite to hatred and intolerance;

(v) The Special Rapporteurs on religious intolerance and on the independence of judges and lawyers to undertake visits to Pakistan at the earliest possible opportunity and submit reports to the Commission;

(vi) The Government, for peace and harmony in Pakistan, to withdraw its bill to approve Amendment 15 to implement the Sharia Law as the law of the land.

Annex

Pakistan Penal Code

The relevant provisions of the Pakistan Penal Code are the following:

1. Offences related to religion (original text)

Section 295.

Injuring or defiling place of worship, with intent to insult the religion of any class: Whoever, destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 295-A.

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs: Whoever with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan by words, either spoken or written or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 10 years, or with fine, or with both.

2. Blasphemy Laws

Section 295-B.

Defiling, etc., of copy of Holy Koran: Whoever wilfully defiles, damages or desecrates a copy of the Holy Koran or an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.

Section 295-C.

Use of derogatory remarks etc., in respect of the Holy Prophet:

Whoever by words, either spoken or written or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammed (peace be upon him) shall be punished with death.

Section 298.

Uttering words, etc., with deliberate intent of wounding religious feelings:

Whoever, with the deliberate intention of wounding the religious feelings of any person utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 298-A.

Use of derogatory remarks, etc., in respect of holy personages:

Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (Khulafa-e-Raashideen) or companions (Sahaaba) of the Holy Prophet (peace be upon him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 298-B.

Misuse of epithets, description and titles, etc., reserved for certain holy personages or places:

1. Any person of the Qadiani group or the Lahori group (who call themselves "Ahmadis" or by any other name) who by words, either spoken or written, or by visible representation: (a) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as "Ameer-ul-Mumineen", "Khalifat-ul-Mumineen", "Khalifat-ul-Muslimeen", "Sahaabi" or "Razi Allah Anho"; (b) Refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (peace be upon him), as Ummul-Mumineen; (c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as Ahle-bait; or (d) refers to, or names, or calls, his place of worship as Masjid (mosque); shall be punished with imprisonment of either description for a term which may extend to three years, and shall be also liable to fine.

2. Any person of the Qadiani group or Lahori group (who call themselves "Ahmadis" or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as "Azan" or recites Azan as used by the Muslims, shall be punished with imprisonment or either description for a term which may extend to three years and shall also be liable to fine.

Section 298-C.

Persons of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith:

Any person of the Qadiani group or the Lahori group (who call themselves "Ahmadis" or by any other name), who, directly or indirectly, pose himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.